



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 29 2009

Thomas V. Johnson, Esq
Attorney At Law
15915 Ventura Blvd.
Suite 301
Encino, CA 91436

Re: MUR 6232 (Gladwin Gill)

Dear Mr. Johnson:

On June 26, 2009, the Federal Election Commission (the "Commission") notified your client, Gladwin Gill, that the Commission had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

Upon further review of the available information and information provided by you in your response, the Commission, on November 17, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Sidney Rocke".

Sidney Rocke
Assistant General Counsel

Enclosure
Factual and Legal Analysis

10044261141

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6 **RESPONDENT: Gladwin Gill MUR: 6232**

7
8 **I. INTRODUCTION**

9
10 **This matter originated with information ascertained by the Federal Election**
11 **Commission ("the Commission") in the normal course of carrying out its supervisory**
12 **responsibilities. See 2 U.S.C. § 437g(a)(2). On December 14, 2007, Gladwin Gill ("Gill")**
13 **pled guilty to one count of knowingly and willfully violating the Federal Election**
14 **Campaign Act of 1971, as amended ("the Act") by making contributions in the names of**
15 **others totaling \$66,700 to several federal election campaigns. On December 10, 2008,**
16 **Gill was sentenced to one year and one day in federal prison followed by three years of**
17 **supervised release, including six months of home detention. Gill was also assessed a fine**
18 **of \$200,100 (300% of the amount in violation of 2 U.S.C. § 441f) to be paid within 30**
19 **days after sentencing. He reported to the U.S. Bureau of Prisons on May 29, 2009, and is**
20 **currently incarcerated in a facility in Los Angeles, California.**

21 **Had the Commission simply declined to open a matter under review, there would**
22 **be no public record of its analysis and conclusions regarding these violations. In the**
23 **interests of transparency and providing guidance, and for the reasons set forth below, the**
24 **Commission opened a matter under review, dismissed the matter on the grounds of**
25 **prosecutorial discretion, and closed the file.**

26 **II. FACTUAL SUMMARY**

27 **On December 14, 2007, the Department of Justice, U.S. Attorney's Office,**
28 **Central District of California ("DOJ") filed a one-count felony Information against**

10044261142

1 Gladwin Gill ("Gill"). The Information alleges that, beginning on or about June 26,
2 2003, and continuing to on or about March 31, 2005, Gill asked or instructed various
3 friends and employees of his company to make monetary contributions totaling \$66,700
4 to several federal election campaigns in violation of 2 U.S.C. § 441f of the Act. In the
5 criminal plea agreement ("Plea Agreement"), filed on the same day as the Information,
6 Gill admitted the allegations contained in the Information.

7 Neither the Information nor the Plea Agreement identified the names of the
8 conduits or recipient committees or provided information as to whether the entity whose
9 funds were used for the reimbursements was a corporation. The entity was only
10 identified as a "company," and the only information provided for the conduit
11 contributions were the dates the contributions were made as well as the initials of the
12 conduits and the recipient committees. It appears that the funds used for reimbursement
13 purposes were corporate funds that originated from one of two corporate entities with
14 whom Gill was associated. The Information identifies multiple straw contributions to
15 various federal candidates and committees. An independent search of the Commission's
16 disclosure database revealed the names of additional individuals who likely acted as
17 conduits.

18 On June 30, 2009, the Commission sent a notification letter to Gill informing him
19 of the possibility of being named as a respondent for violations of the Act. In addition,
20 Gill was provided with the opportunity to submit written factual or legal materials
21 relevant to the matter within 15 days from the date of the letter. Gill's counsel, Thomas
22 Johnston, requested and was granted a ten (10) day extension to respond to the
23 Commission's notification letter. On August 17, 2009, the Commission received, by

10044261142

1 facsimile, Gill's response. Gill's counsel primarily argues that the "imposition of a
2 punitive sanction against Mr. Gill by the Commission would be barred by the Double
3 Jeopardy Clause of the Fifth Amendment of the U.S. Constitution." In addition, Gill
4 argues that "developing case law now calls into question whether 'conduit' contributions
5 of the type referenced in the Commission's notification letter are, in fact, prohibited
6 under the language of 2 U.S.C. § 441f," citing to *U.S. v. O'Donnell*, C.D. Cal., Criminal
7 No. 08-872.¹

8 **III. LEGAL ANALYSIS**

9 The Act provides that no person shall make a contribution in the name of another
10 person or knowingly permit his or her name to be used to effect such a contribution, and
11 that no person shall knowingly accept a contribution made by one person in the name of
12 another person. See 2 U.S.C. § 441f. Furthermore, the Commission's regulations
13 provide that no person shall "knowingly help or assist any person in making a
14 contribution in the name of another." 11 C.F.R. § 110.4(b)(1)(iii).

15 Gill's Plea Agreement describes a scheme to funnel contributions through family
16 members and employees of his company to various federal candidates and committees.
17 Gill admitted to knowingly and willfully causing various straw contributions to be made
18 through these individuals in violation of 2 U.S.C. § 441f. In doing so, Gill also attempted
19 to conceal the true source of the contributions.

¹ On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated § 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. On September 23, 2009, the Commission filed an amicus curiae brief supporting the government's appeal of that decision. See MUR 5504 (Karloly) (recent Commission matter involving § 441f violation).

10044261144

1 Despite Gill's clear violation of § 441f, the Commission determined that Gill's
2 criminal punishment, including both the prison sentence and the substantial fine imposed
3 upon him, is sufficient to address his violation. Gill is currently serving a prison sentence
4 of one year and one day, he will be confined at home for six months, and he is required to
5 pay a fine of \$200,100. Continuing to pursue Gill under these circumstances does not
6 appear to be a prudent use of Commission resources. Accordingly, the Commission
7 approved opening a matter under review and determined to dismiss the matter based on
8 prosecutorial discretion.²

9 Gill's conduct also implicated two corporate entities affiliated with him as well as
10 the individual conduits involved in the reimbursement scheme. Neither these corporate
11 entities nor the individual conduits have been named as respondents in this matter. It
12 appears that funds used to reimburse the conduits were obtained from one of two
13 corporate entities affiliated with him. Rather than initiating an investigation to determine
14 which entity was the source of these funds, the Commission declined to take further action
15 as to the potential corporate respondent.

16 In previous § 441f matters, the Commission has not pursued conduits in
17 contribution reimbursement schemes where the conduits were subordinate employees or
18 spouses. In other matters, however, the Commission has found reason to believe that
19 individual conduits violated the law, such as when they were actively involved in the

² The second argument raised by Gill in his response is that "despite the statute's denomination of the fine authorized by 2 U.S.C. § 427g(a)(5)(B) as a 'civil' penalty, that fine is a quasi-criminal sanction subject to double jeopardy preemption and cannot be distinguished as a mere 'civil,' as opposed to criminal remedy." Gill cites to *Hudson v. U.S.*, 522 U.S. 93, 118 S.Ct. 488 (1997) in support of this argument. Given our decision not to proceed against Gill, this issue need not be addressed extensively here. Even so, we believe that a subsequent civil proceeding and penalty against Gill would not violate the Double Jeopardy Clause under the two-part test set forth in *Hudson* and *United States v. Ward*, 448 U.S. 242, 248, 100 S.Ct. 2636, 2641 (1980).

10044261145

1 reimbursement schemes, coerced or encouraged others to participate in such schemes, or
2 were public officials.³ In the present matter, however, it appears that the individual
3 conduits were subordinate employees and family members of Gill, and there is no
4 indication that any of the conduits were actively involved in the reimbursement scheme
5 or coerced or encouraged others to participate in the scheme. Accordingly, the
6 Commission declined to take further action as to the individual conduits.

7 **IV. CONCLUSION**

8 Based on the foregoing reasons, the Commission opened a matter under review,
9 dismissed MUR 6232 as a matter of prosecutorial discretion, and closed the file. *See*
10 *Heckler v. Chaney*, 470 U.S. 821 (1985).

³ *See e.g.*, MUR 5871 (Noe) (after an investigation, the Commission found reason to believe as to (1) conduits who not only actively participated in the conduit scheme, but also recruited others to participate, and (2) public officials who participated in the scheme, but ultimately took no further action as to conduits who were merely subordinates/employees); and MUR 5666 (MZM, Inc.) (after an investigation, Commission found reason to believe as to one conduit, a senior manager of MZM, Inc., who reimbursed other less-senior conduits and himself with company funds for political contributions, but Commission took no further action as to other less-senior employee conduits; the Commission ultimately accepted a signed conciliation agreement from the senior manager conduit admitting to a violation of 2 U.S.C. § 441f and providing for a civil penalty of \$42,000).

10044261746